In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 310

C. GORDON ANDERSON, as TRUSTEE for TMT TRAILER FERRY, INC., FLORIDA TOWING CORP., WAYLAND T. COPPEDGE and SON CORP., MILLER ELECTRIC COMPANY OF FLORIDA, WHITE STACK TOWING CORPORATION, and ST. JOHNS BAR PILOTS ASSOCIATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the district court (Pet. App. A16, R. 821) and the opinion of the court of appeals (Pet. App. A1) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 1964 (Pet. App. A14). The petition for

a writ of certiorari was filed on July 22, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below correctly held that the nontax claims filed by the United States in this corporate reorganization proceeding were entitled to priority in payment by virtue of 31 U.S.C 191.

STATUTES INVOLVED

The statutes involved appear in the Appendix, pp. 7-8, *infra*.

STATEMENT

In this proceeding under Chapter X of the Bankruptcy Act, 11 U.S.C. 501-676, for the reorganization of a maritime freight carrier, TMT Trailer Ferry, Inc. (TMT), the United States filed certain nontax claims aggregating over $900,000[1] and asserted their priority under 31 U.S.C. 191 (App., *infra*, p. 7). Petitioners, the reorganization trustee and representatives of various secured and unsecured creditors, sought an order denying priority status to the claims (Pet. App. A16). The district court entered an order, ruling that since Chapter X contained a priority provision for tax claims,[2] the government's nontax claims

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[1] The general nature of these claims and their specific amounts are set forth in n. 2 of the court of appeals' opinion (Pet. App. A2).

[2] Section 199, 11 U.S.C. 599, pp. 7-8, *infra*.

were not entitled to priority (Pet. App. A22). The court also held that, in any event, the United States could not claim priority with respect to two of the claims,[3] since it did not become the owner of those claims until after the reorganization petition was filed (Pet. App. A23-24).

The court of appeals reversed, one judge dissenting. It concluded that the priority conferred on all debts of the United States by 31 U.S.C. 191 was applicable and not inconsistent with the provisions of Chapter X (Pet. App. A9-A10).

As to the Maritime Administration and Small Business Administration claims, the majority found it unnecessary to consider the government's contention that they were priority claims before the date of an involuntary petition filed by TMT's creditors, since under 11 U.S.C. § 601 (*infra*, p. 8) they had become priority claims before that petition had been approved and trustees appointed on November 18, 1957.[4] On that date the United States was unquestionably the

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[3] A $696,494.19 claim of the Maritime Administration, and a $124,608.59 claim of the Small Business Administration. See numbers 1 and 2 in n. 2 of the court of appeals' opinion (Pet. App. A2).

[4] After the filing of the involuntary petition on June 27, 1957 (R. 395-401), TMT first moved to dismiss the petition (R. 402-403), and then filed an answer (R. 407-410) denying insolvency, commission of acts of bankruptcy, or indebtedness to one of the petitioning creditors. However, on November 15, 1957, TMT filed a petition requesting that its answer be withdrawn and that the court grant the petition of June 27 for reorganization and appoint a trustee (R. 430-432). The petition was granted and temporary trustees appointed on November 18, 1957 (R. 433-439).

owner of both claims and entitled to priority (Pet. App. A11-A12).

ARGUMENT

1. The majority below was correct in holding that the government's nontax claims were entitled to priority by virtue of 31 U.S.C. 191. There is little room for doubt that the protection afforded the federal treasury by the priority provisions of 31 U.S.C. 191 extends to Chapter X proceedings. See 6 Collier, *Bankruptcy*, 14th ed., para. 9.13[2], pp. 2845-2847. And Chapter X's legislative history, quoted in part by the court below (Pet. App. A7-A8), fully confirms this view, for it makes it clear that the principles of priority applicable to Chapter X proceedings were to be the same as those which pertain to federal equity receiverships. See also 6 Collier, op. cit., para. 9.10, p. 2825; 11 Remington, *Bankruptcy* (1961 ed.), section 4524, pp. 243-244. And the priority of all government debts under 31 U.S.C. 191 has long been recognized in the field of equity receiverships. See *e.g.*, *New York* v. *Maclay*, 288 U.S. 290; *United States* v. *Butterworth Corp.*, 269 U.S. 504.

Section 199 of Chapter X, 11 U.S.C. 599, giving a special priority to tax and customs claims of the United States, does not require a different result. That section is in no way inconsistent with 31 U.S.C. 191, and there is nothing to indicate that it was intended to make 31 U.S.C. 191 inapplicable. See 6 Collier, op. cit., para. 9.17, p. 2867-2868. As the court below noted, Section 199, pertaining as it does to a

single limited class of claims, was obviously not designed to cover all matters of priorities (Pet. App. A9). In that respect, the situation here differs significantly from those in *Davis* v. *Pringle*, 268 U.S. 315 and *Guarantee Co.* v. *Title Guaranty Co.*, 224 U.S. 152, both of which involved section 64, an all-encompassing priority provision.

2. Petitioners' other contention (Pet. 17-18)— that the court below failed to observe the general bankruptcy rule that claims are classified and the rights of creditors fixed as of the filing date of a bankruptcy petition—ignores the fact that this is not a bankruptcy case. It is a corporate reorganization, and as such is governed by Section 201 of Chapter X, 11 U.S.C. § 601, which makes the critical date that on which the trustee qualifies or the petition is approved. See 6 Collier, op. cit., para. 9.19, p. 2871; 11 Remington, op. cit., § 4518, pp. 230-231.[5]

In this case that date was November 18, 1957 (R. 433-439; see *supra*, p. 3 n. 4). Not even petitioners dispute the findings below that at some time prior to that date the United States had without question become the absolute owner of the Maritime Administration and Small Business Administration claims. Thus

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[5] Although section 201 speaks only in terms of the "provability" of claims arising after the filing of the petition, its effect is to place such claims on the same footing for purposes of classification as claims arising prior to the filing of the petition. 6 Collier, op. cit., para. 9.11, p. 2836. See also Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act*, 52 Harv. L. Rev. 1, 28 (1938).

the ruling below that the United States was entitled to priority on these claims under 31 U.S.C. § 191 was plainly correct.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER, 1964

APPENDIX

Section 3466 of the Revised Statutes, 31 U.S.C. 191 provides:

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 199 of the Bankruptcy Act of 1898, as amended by the Chandler Act, 1938, 52 Stat. 893, 11 U.S.C. 599, provides:

> If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), no plan which does not provide for the payment

thereof shall be confirmed by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided*, That if the Secretary of the Treasury shall fail to accept or reject a plan for more than ninety days after receipt of written notice so to do from the court to which the plan has been proposed, accompanied by a certified copy of the plan, his consent shall be conclusively presumed.

Section 201 of the Bankruptcy Act of 1898, as amended by the Chandler Act, 1938, 52 Stat. 893, 11 U.S.C. 601, provides:

> All claims arising after the filing of a petition under this chapter and before the qualification of a receiver or trustee or before the petition is approved and the debtor continued in possession, whichever first occurs, shall be provable.